



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Penta Post & Treating Company, Inc.

File: B-239353

Date: April 26, 1990

Bryan Ravenscroft, for the protester.
James Vickers, Esq., and John Brosnan, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Protest of allegedly restrictive specifications is dismissed
as untimely where allegations initially were raised in
agency-level protest and subsequent protest to General
Accounting Office was not filed within 10 working days after
closing date for receipt of quotations, which constituted
initial adverse agency action on the protest.

DECISION

Penta Post & Treating Company, Inc., protests the specifica-
tions contained in request for quotations (RFQ) No. ID910-
RFQ0-009 issued by the Bureau of Land Management, Department
of the Interior, for fence system. Penta objects to the
solicitation's prohibition on the use of pentachlorophenol
as a preservative for wood fence posts.

The closing date for receipt of quotations under the RFQ was
February 20, 1990. Penta protested the specifications to
the contracting officer by letter dated February 14. By
letter dated March 29, and according to a signed certificate
of receipt, received by Penta on March 30, the contracting
officer denied the protest. Penta protested to our Office
by letter dated April 12, which we received on April 18.

Penta's protest is untimely. While Penta timely protested
to the contracting officer prior to the closing date for
receipt of quotations, it did not subsequently protest to us
within 10 days of "initial adverse agency action." Under
our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1989),
where a protest is filed initially with the agency, any

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subsequent protest to our Office must be filed no later than 10 working days after initial adverse agency action. The term "adverse agency action" includes the agency's proceeding with the receipt of offers or quotations in the face of a protest alleging solicitation improprieties. 4 C.F.R. § 21.0(f); Carlisle Tire and Rubber Co., B-235413, May 12, 1989, 89-1 CPD ¶ 457. Here, quotations were received as scheduled on February 20 without any action being taken on the protest. Thus, since Penta's protest was filed with our Office more than 10 working days after February 20, it is untimely.

Moreover, even if the contracting officer's formal denial of Penta's protest, received by Penta on March 30, is considered the adverse agency action by which to judge timeliness, the protest is still untimely. Penta's protest was filed (received) at our Office on April 18, more than 10 working days after Penta's receipt of the contracting officer's letter.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Associate General Counsel